

**TRANSPORTATION RULES
OF
THE GEORGIA DEPARTMENT OF MOTOR VEHICLE SAFETY**

**CHAPTER 10
CIVIL PENALTIES**

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10-1 COMMISSIONER'S AUTHORITY

The Commissioner of the Department is authorized to regulate the business of a carrier and may impose civil penalties for a carrier's failure to comply with applicable law and/or Department rules and regulations.

Authority: O.C.G.A. §40-8-2; O.C.G.A. §46-1-1(9)(C)(x); O.C.G.A. §46-1-1(13)(A) O.C.G.A. §46-2-91; O.C.G.A. §46-2-94 O.C.G.A. §46-7-2; O.C.G.A. §46-7-26; O.C.G.A. §46-7-27; O.C.G.A. §46-7-37; O.C.G.A. §46-7-85.1 et seq.; O.C.G.A. §46-11-1 et seq.

10-2 DEFINITIONS

- (1) Administrative Law Judge. The hearing officer who presides over contested cases.
- (2) Carrier. A person who undertakes the transporting of goods or passengers for compensation.
- (3) Consent Agreement. An agreement entered into by the Department and a carrier or person resolving allegations that the carrier or person violated applicable law and/or Department rules and regulations.
- (4) Contested case. A proceeding in which the legal rights, duties, or privileges of a party are required by law to be determined by an agency after an opportunity for hearing.
- (5) Civil Penalties. Monetary fines the Department may assess against a carrier or person for willfully failing to comply with applicable laws and/or Department rules and regulations.
- (6) OSAH. Office of State Administrative Hearings.

- (7) Motor Carrier Safety Regulations. Any safety or hazardous material regulations that have been promulgated and adopted by the Department.
- (8) Notice of Noncompliance. Official notice issued by the Department setting forth a carrier's violations of applicable laws and/or Department rules and regulations.
- (9) Person. Any individual, partnership, trust, private or public corporation, municipality, county, political subdivision, public authority, cooperative, association, or public or private organization of any character.

Authority: O.C.G.A. §46-1-1; O.C.G.A. §50-13-40 et seq.; 49 CFR Parts 350, 383, 390-397.

10-3 AMOUNT OF CIVIL PENALTIES

- (1) The Commissioner is authorized to impose civil penalties against a carrier in the amount not to exceed \$15,000 for each willful violation of any laws administered and/or regulations promulgated by the Department. Additionally, the Commissioner may impose an additional \$10,000 civil penalty for each day during which such violation continued.
- (2) Any person who possesses, maintains, or transports any quantity of anhydrous ammonia in a container or receptacle other than a tank truck, tank trailer, rail tank car, bulk storage tank, field (nurse) tank, field applicator, or any container approved for anhydrous ammonia by the Department of Agriculture or the United States Department of Transportation or violates any safety rules and regulations promulgated pursuant to O.C.G.A. §46-7-26 shall be subject to civil penalties in an amount not to exceed \$25,000 for each violation.
- (3) Any person who knowingly violates applicable federal Hazardous Material Regulations set forth in Title 49 of the Federal Regulations as required by O.C.G.A. 40-6-253.1 is liable for a civil penalty of not more than \$27,500 and not less than \$250 for each violation. If the violation is a continuing one and involves the transporting of hazardous materials or the causing of them to be transported or shipped, each day of the violation constitutes a separate offense for which the Commissioner may impose a penalty.

Notwithstanding the foregoing, any person who knowingly violates § 171.2(g) of Title 49 of the Code of Federal Regulations or willfully violates any provision of the Hazardous Materials Regulations may also be fined under Title 18 of the United States Code, or imprisoned for not more than five (5) years, or both.

- (4) Any person who drives a commercial motor vehicle while in violation of the provisions of O.C.G.A. §40-5-143 or any employer who knowingly allows, requires, permits, or authorizes a driver to drive a commercial motor vehicle in violation of the provisions of O.C.G.A. §40-5-145 shall be guilty of a felony and, upon conviction thereof, shall be punished by a civil penalty of \$2,500 for each offense and by a fine of \$5,000 or imprisonment for not more than 90 days, or both, for each offense.

The civil penalty assessed against an employer who knowingly allows, requires, permits, or authorizes a driver to drive a commercial motor vehicle in violation of any federal state or local law or regulation pertaining to railroad grade crossings shall not exceed \$10,000.

(5) Any person who violates the statutory provisions of O.C.G.A. §44-1-33 pertaining to nonconsensual towing shall be subject to civil penalties not to exceed \$2,500 for each violation.

(6) The Commissioner may impose civil penalties not to exceed \$5,000 for each violation if it is determined that any person, firm, or corporation is operating as a household goods carrier for hire without a valid certification of public convenience or is holding itself out as a carrier without such a certificate.

Authority: O.C.G.A. §16-11-111; O.C.G.A. §40-16-6; O.C.G.A. §40-5-159; O.C.G.A. §40-5-145; O.C.G.A. §40-6-253.1; O.C.G.A. §44-1-33; O.C.G.A. §46-2-91; O.C.G.A. §46-2-92; O.C.G.A. §46-2-94; 49 CFR 100-185; 18 USC §3571.

10-4 NOTICE OF NONCOMPLIANCE

(1) The Department shall issue, by U.S. Mail or personal service, a Notice of Noncompliance to a person or carrier upon determination that the carrier or person has willfully:

- (a) Violated any laws administered by the Commissioner;
- (b) Violated any regulations administered by the Commissioner; or
- (c) Failed, neglected or refused to comply with any order after receiving notice thereof.

(2) The Notice of Noncompliance shall include:

- (a) Time, place, and nature of the hearing;
- (b) Concise statement of violations and applicable statutes and regulations;
- (c) Statement of the legal authority and jurisdiction under which the Notice of Compliance has been issued;
- (d) Case name and number;
- (e) Notice of amount claimed and notice of the maximum amount authorized pursuant to applicable statutory provisions;
- (f) Statement as to the right of the carrier or person to subpoena witnesses and evidence through the agency;
- (g) Statement regarding the carrier's or person's right to pay the penalties assessed or, within thirty (30) days of receipt of the Notice of Noncompliance, request a hearing to contest the imposition of the penalties.

Such notice shall be deemed received three (3) days after mailing.

(3) In the event that the carrier or person fails to request a hearing within thirty (30) days' receipt of the Notice of Noncompliance:

(a) Any rights to an appeal and hearing shall be considered to have been waived; and

(b) The assessed penalties shall become effective upon the expiration of the thirty (30) day notice period.

Authority: O.C.G.A. §46-2-91; O.C.G.A. §46-2-94; O.C.G.A. §50-13-13.

10-5 Contested Cases

(1) A carrier or person may contest a Department order imposing civil penalties by submitting to the Department a written request for hearing within thirty (30) days' receipt of the Notice of Noncompliance, which should contain the following information:

(a) A case name and number;

(b) The complete name and address of the party filing the request;

(c) The name and address of counsel, if represented.

All requests for a hearing must be signed by the party requesting the hearing or by party's counsel, if represented by counsel.

(2) The Department will grant hearings as a matter of right only upon timely receipt of a request as described in (1) above, but may, in its discretion, allow extensions of time and amendments of requests for good cause shown by a carrier.

(3) Upon receipt of a timely, properly filed request for a hearing, the Department will forward the request and all pertinent documents to the Georgia Office of State Administrative Hearings.

(4) The appeals and hearing procedure shall be in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedures Act".

(a) The decision of the Administrative Law Judge in the contested case shall be an initial decision. The Department may review the initial decision and take, within thirty (30) days of the decision, the following actions:

(i) Affirm the initial decision of the Administrative Law Judge and adopt the findings and/or conclusions as is deemed appropriate;

(ii) Adopt a new decision based on the record;

- (iii) Remand the case to the Administrative Law Judge for such further proceedings as the agency may order;
- (iv) Reverse the Administrative Law Judge's decision and enter such order in the case as is deemed appropriate.
- (b) If the Department fails to take any of the actions set forth hereinabove within thirty (30) days of the date that the decision was rendered by the Administrative Law Judge, the initial decision shall be adopted as the final agency decision.
- (c) If the carrier or person is aggrieved by the final decision, it may file a petition within thirty (30) days after the service of the final decision to the Superior Court of Fulton County. Copies of the petition shall be served upon the Department by personal service to the Legal Services Section of the Department of Motor Vehicle Safety, 2600 East View Parkway, Conyers, Georgia 30013 or by mail to the Department of Motor Vehicle Safety, Legal Services Section, P.O. Box 80447, 2600 East View Parkway, Conyers, Georgia 30013. Service on any other person, agency, or entity shall not constitute service on or notice to the Department of the action for the purpose of appeals of contested cases under the Administrative Procedures Act. The carrier/person or counsel shall also furnish a copy of the appeal by mail to the Office of State Administrative Hearings and to the Department of Law, 40 Capitol Square, SW, Atlanta, Georgia 30334-1300.

Authority: O.C.G.A. §50-13-17; O.C.G.A. §50-13-19.

10-6 FAILURE TO PAY ASSESSED PENALTIES

If the carrier or person fails to remit to the Department the assessed penalties set forth in the Notice of Compliance upon the expiration of the thirty (30) day notice period or fails to do so after the final decision imposing the penalties is rendered, the Department may, pursuant to O.C.G.A. §46-2-92(b), refer the case to the Attorney General's Office to initiate an action for the recovery of the penalties in the Superior Court of Fulton County.

Authority: O.C.G.A. §50-13-13; O.C.G.A. §50-13-17; O.C.G.A. §50-13-19; O.C.G.A. §50-13-41; O.C.G.A. §46-2-92(b), O.C.G.A. §46-2-94.

10-7 CONSENT AGREEMENTS

- (1) During the pre-hearing conference or a hearing, when appropriate, the Department may enter into a consent agreement with a carrier or person depending on the nature, circumstances, extent, and gravity of the violation(s) alleged, the carrier's or person's degree of culpability, history of prior offenses, ability to pay the civil penalties imposed, as well as the carrier's or person's willingness to comply with applicable laws and regulations.
- (2) The consent agreement may include provisions specifying the following:
 - (a) The amount of civil penalties the carrier or person agrees to pay;

- (b) additional training and education the carrier or person agrees to obtain;
- (c) a listing of equipment or materials the carrier or person agrees to purchase to aid in the compliance with applicable laws and regulations; and
- (d) language evidencing the carrier's or person's agreement to cease and desist from practices that are not consistent with the applicable laws and regulations.

Authority: O.C.G.A. §50-13-13.

10-8 PAYMENT OF CIVIL PENALTIES

Civil penalties shall be paid by certified check, cashier's check, or money order. The instrument of payment shall contain the identifying case number for which payment is being tendered. Payment is complete upon receipt by the Department's staff.

If a carrier or person responds to the Notice of Noncompliance by rendering full payment of the civil penalties, such payment constitutes an admission of the occurrence of the violation for purposes of consideration of a carrier's or person's history of violations in the context of assessing the appropriate sanctions for any future violations.